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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/538,684	03/30/2000	Larry D. Kinsman	3056.1US (96-803.1)	8722

7590 06/12/2009
Joseph A Walkowski
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Salt Lake City, UT 84110

EXAMINER

GRAYBILL, DAVID E

ART UNIT	PAPER NUMBER
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2894

MAIL DATE	DELIVERY MODE
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06/12/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Communication Re: Appeal	Application No.	Applicant(s)	
	09/538,684	KINSMAN ET AL.	
	Examiner	Art Unit	
	David E. Graybill	2894	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. The Notice of Appeal filed on _____ is not acceptable because:
- (a) it was not timely filed.
 - (b) the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
 - (c) the appeal fee received on _____ was not timely filed.
 - (d) the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$_____.
 - (e) the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
 - (f) a Notice of Allowability, PTO-37, was mailed by the Office on _____.
2. The appeal brief filed on _____ is NOT acceptable for the reason(s) indicated below:
- (a) the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
 - (b) the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
 - (c) the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$_____.

The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).

3. The appeal in this application is DISMISSED because:
- (a) the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
 - (b) the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
 - (c) a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
 - (d) other: See Continuation Sheet.
4. Because of the dismissal of the appeal, this application:
- (a) is abandoned because there are no allowed claims.
 - (b) is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
 - (c) is before the examiner for consideration.

/David E Graybill/ Primary Examiner, Art Unit 2894	
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Continuation of 3. (d) Other:

37 CFR 41.37(d):

d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

MPEP 1205.03 Non-Compliant Appeal Brief and Amended Brief:

The appeal will be dismissed if the appellant does not timely file an amended brief, or files an amended brief which does not overcome all the reasons for noncompliance of which the appellant was notified.

MPEP 1215.04 Dismissal of Appeal:

An appeal will also be dismissed if an applicant fails to timely and fully reply to a notice of noncompliance with 37 CFR 41.37(d). See MPEP § 1205.03.

The amended brief filed on 3-23-09 does not overcome all the reasons for noncompliance of which the appellant was notified in the Notification of Non-Compliant Appeal Brief filed on 2-24-09. Specifically, the required section that was found defective has not been filed. To further clarify, the amended brief files a section "VII. Argument" but the Appeal Brief does not contain a section "VII Argument." To continue to afford appellant the benefit of compact prosecution, it is noted that the amended brief appears to amend the Reply Brief filed on 3-04-08.